

July 30, 2002

Stephen H. Klionsky, Esq.  
Western Massachusetts Electric Company  
260 Franklin Street, 21<sup>st</sup> Floor  
Boston, Massachusetts 02110

RE: Western Massachusetts Electric Company, D.T.E. 01-99-A

Dear Attorney Klionsky:

I. INTRODUCTION

On June 4, 2002, the Department of Telecommunications and Energy (“Department”) approved an amendatory agreement (“2001 Amendatory Agreement”) between Western Massachusetts Electric Company (“WMECo”) and Vermont Yankee Nuclear Power Corporation (“VYNPC”) related to the pending sale of the Vermont Yankee nuclear power station (“Vermont Yankee”) to Entergy Nuclear Vermont, LLC (“Entergy”). Western Massachusetts Electric Company, D.T.E. 01-99 (2002). WMECo is a sponsoring shareholder of Vermont Yankee, with a 2.5 percent entitlement in the net capacity, output, and ancillary products of the station. Id. at 3. The Department found that the 2001 Amendatory Agreement is in the public interest and consistent with G.L. c. 164. Id. at 9. The Department also permitted WMECo to include its share of the ongoing cost-of-service for Vermont Yankee and costs and revenues from power purchased from Vermont Yankee under the 2001 Amendatory Agreement in its transition charge. Id. at 11.

On July 25, 2002, WMECo filed a motion seeking to reopen the record in D.T.E. 01-99 for the purpose of making additional findings related to the treatment of excess decommissioning funds (“WMECo Motion”). On July 29, 2002, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed an opposition to the WMECo Motion (“Attorney General Opposition”).

WMECo seeks to introduce evidence pertaining to proposed agreements (“Liquidation Agreements”) amending a memorandum of understanding (“MOU”) between Entergy, the Vermont Yankee sponsoring shareholders, and the Vermont Department of Public Service regarding the disposition of excess decommissioning funds upon a delayed decommissioning of Vermont Yankee (WMECo Motion at 2-3, citing Exh. AG-RR-SUPP-1(a)).<sup>1</sup>

Recent rulings by the Vermont Public Service Board rejected the sharing of excess decommissioning funds and required all excess funds to be returned to ratepayers (WMECo Motion at 2-3, citing Order Approving Sale of Vermont Yankee Nuclear Power Station, Vt. P.S.B. Docket No. 6545 (June 13, 2002); Order re: Motions to Alter or Amend, and to Unseal Exhibit, Vt. P.S.B. Docket No. 6545 (July 11, 2002); Order of Clarification, Vt. P.S.B. Docket No. 6545 (July 15, 2002)). Entergy notified VYNPC that it was unwilling to close the sale because of the excess decommissioning fund condition imposed by the Vermont Public Service Board (WMECo Motion at 3). The sponsoring shareholders, including WMECo, entered into the Liquidation Agreements in order to permit the transaction to proceed (id.).

The Liquidation Agreements consist of two documents. The first document is an “Assignment of Rights to Excess Decommissioning Funds” (“Assignment Agreement”). In the Assignment Agreement, the non-Vermont sponsoring shareholders of Vermont Yankee each agree to assign to Entergy the rights to their pro rata shares of any excess funds that they may be entitled to have distributed to them under the MOU. The second document is a “Sponsor Agreement Relating to Excess Decommissioning Funds” (“Sponsor Agreement”). In the Sponsor Agreement, the Vermont sponsoring shareholders of Vermont Yankee agree to pay \$1.5 million to the non-Vermont sponsoring shareholders concurrently with execution of the

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<sup>1</sup> Under the terms of the MOU, if decommissioning of Vermont Yankee is delayed beyond March 31, 2022, excess funds remaining in the decommissioning trust funds transferred from VYNPC to Entergy, would be shared equally between Entergy and VYNPC. D.T.E. 01-99, at 6, n.7.

Assignment Agreement.<sup>2</sup> WMECo's share of the \$1.5 million liquidation payment is \$83,333.<sup>3</sup>

## II. POSITIONS OF THE PARTIES

WMECo argues that the Department approved the 2001 Amendatory Agreement because it will achieve savings for customers as well as other benefits, and that the savings associated with the 2001 Amendatory Agreement will be used to mitigate the Company's transition costs (WMECo Motion at 4, citing D.T.E. 01-99, at 8-9 (2002)). WMECo asserts that Department approval of the Liquidation Agreements is necessary to complete the sale of Vermont Yankee, and without such approval the benefits of the sale to ratepayers will be lost (id. at 4).

WMECo argues that the Liquidation Agreements will provide the following additional benefits to its ratepayers: (1) the elimination of uncertainty regarding whether there actually will be excess decommissioning funds remaining upon the decommissioning of Vermont Yankee; (2) the elimination of uncertainty regarding when such excess funds will become available; and (3) the elimination of inter-generational issues caused by the fact that present-day customers contributed to the decommissioning fund, but customers far in the future would have received the benefit of the refunds (id. at 4). WMECo also argues that it is doubtful whether there will be any excess decommissioning funds when Vermont Yankee is decommissioned (Keane Aff. at 2). WMECo further states that if the operating license is extended, decommissioning may not be completed until many decades in the future, and it is "not possible to forecast decommissioning costs with any degree of certainty that far into the future" (id.). Under Liquidation Agreements, WMECo would receive \$83,333 from the Vermont sponsors of Vermont Yankee. WMECo argues that this is advantageous because WMECo's customers are guaranteed a payment, whereas it argues that it is doubtful and speculative whether there actually will be excess decommissioning funds at decommissioning (id. at 3).

The Attorney General argues that WMECo has not established good cause for reopening the evidentiary record in this proceeding (Attorney General Opposition at 3). The Attorney General argues that discovery and cross-examination are necessary to determine if WMECo's claims regarding the likelihood and amount of excess decommissioning funds have merit (id.). As an alternative to holding additional evidentiary hearings, the Attorney General

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<sup>2</sup> The payments represent the net present value of the best estimate of the potential value of each non-Vermont Sponsor's pro rata share of excess decommissioning funds that may be available in the year 2042 (Sponsor Agreement at 2).

<sup>3</sup> This amount is based on the present value of WMECo's share of the excess decommissioning funds, assumed to be \$100 million in the year 2042 (Keane Aff. at 4).

recommends that WMECo be permitted to keep the \$83,333 liquidation payment in return for a guarantee to Massachusetts ratepayers of their pro rata share of any excess decommissioning funds as granted to Vermont ratepayers by the Vermont Public Service Board (id. at 4).

### III. ANALYSIS AND FINDINGS

The Department may for good cause allow parties to present additional evidence after having rested or after a hearing is closed. 220 C.M.R. § 1.11(8). A motion to reopen the record must be supported by a showing that the proponent has previously unknown or undisclosed information, regarding a material issue that would be likely to have a significant effect on the decision already rendered. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-5 (1990); see also Tennessee Gas Pipeline, D.P.U. 85-207-A (1986). Due to the timing of the recent decisions regarding excess decommissioning funds by the Vermont Public Service Board, WMECo has demonstrated that the need to enter into the Liquidation Agreements was not known at the time of the evidentiary hearing. WMECo has also demonstrated that approval of the new agreements is necessary in order to complete all of the Vermont Yankee transactions, including the 2001 Amendatory Agreement, which the Department previously approved in D.T.E. 01-99. Therefore, the Department finds that WMECo has demonstrated good cause to reopen the evidentiary record.

In our Order in D.T.E. 01-99, the Department found that the 2001 Amendatory Agreement provided numerous benefits to WMECo's ratepayers including the elimination of the risks and liabilities associated with the continued operation of Vermont Yankee as well as a likely savings to customers of approximately \$6.935 million on a net present value basis. D.T.E. 01-99, at 8. Because this savings would be used to mitigate WMECo's transition costs, the Department approved the 2001 Amendatory Agreement as in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii).<sup>4</sup> Because Entergy has indicated that the new terms ordered by the Vermont Public Service Board are not satisfactory and that it will not close the transaction without the proposed Liquidation Agreements, WMECo's customers will not receive the benefits of the 2001 Amendatory Agreement without approval of the Liquidation Agreements.

The Liquidation Agreements provide an additional savings to WMECo's ratepayers in the amount of \$83,333. These savings in present value are the result of assuming that the decommissioning fund will have an excess of \$100 million after decommissioning in 2042 – an

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<sup>4</sup> Although the Department noted the sharing of excess decommissioning funds between VYNPC and Entergy in D.T.E. 01-99, this aspect of the transaction was not relied upon in our approval of the 2001 Amendatory Agreement as in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii). See D.T.E. 01-99, at 6, 8-9.

outcome that is highly unlikely. Thus, the Liquidation Agreements give Massachusetts customers credit today for excess decommissioning funds that are likely to never materialize in the future. More importantly, approval of the Liquidation Agreements will permit the entire transaction to proceed, thus making the benefits of the 2001 Amendatory Agreement to ratepayers possible. Therefore, the Department finds that the proposed Liquidation Agreements are in the public interest, consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii), and the findings made by the Department in D.T.E. 01-99. Accordingly, the Department approves the proposed Liquidation Agreements and WMECo may enter into the Liquidation Agreements. All other aspects of the Department's Order in D.T.E. 01-99 remain intact.

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

cc: Joseph W. Rogers  
Alexander J. Cochis  
Carol R. Wasserman  
Matthew Morais  
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John K. Habib